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Paper No. 14  
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Dolphin Acquisition Corp. d.b.a. Bare Essentials

Serial No. 75/008,309

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Dolphin Acquisition Corp.

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(Ronald R. Sussman, Managing Attorney).

Before Hairston, Chapman and Bucher, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Dolphin Acquisition Corp. d.b.a. Bare Essentials has  
filed an application for registration of the mark shown below:

**i.d.**

for "cosmetics, namely, foundation, blush, eye shadow,  
lipstick and mascara," in International Class 3.<sup>1</sup>

<sup>1</sup> Application serial number 75/008,309, filed on October 20,  
1995, based upon an allegation of a *bona fide* intention to use the  
mark in commerce.

The Trademark Examining Attorney issued a final refusal to register based upon Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark, if used on these cosmetic items, so resembles the mark ID, registered for "cologne, perfume and fragrances for personal use,"<sup>2</sup> as to be likely to cause confusion, to cause mistake or to deceive.

Briefs have been filed, but no oral hearing was requested. We affirm the refusal to register.

Our determination under Section 2(d) is based upon an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the respective goods, it is well settled that goods need not be identical or even competitive in order to support a finding that confusion is likely to result from the use of similar marks thereon, it being sufficient for the purpose that the goods are related in some manner and/or that the circumstances surrounding their marketing are such that

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<sup>2</sup> Reg. No. 2,130,888, issued on January 20, 1998.

they would likely be encountered by the same persons under circumstances that could give rise to the mistaken belief that they emanate from or are in some way associated with the same source. See In re Peebles Inc., 23 USPQ2d 1795 (TTAB 1992); Monsanto Co. v. Enviro-Chem Corp., 199 USPQ 590 (TTAB 1978); and In re International Telephone & Telegraph Corp., 197 USPQ 910 (TTAB 1978).

Nonetheless, applicant argues that applicant's goods and registrant's goods are used for different purposes:

... Applicant's goods are used to make up and apply color and texture to a face - in other words, to create an "identity." Hence, the mark "i.d." The Registrant's goods, by contrast, are personal fragrances used to emit a pleasant odor.

Further, the respective goods are not used - indeed cannot be used - for the same purposes. Applicant's goods cannot be used to create an agreeable odor, and the Registrant's goods cannot be invoked to hide blemishes or to enhance the shape and texture of lips or eyelids. As there is no overlap in the uses of the relevant goods, consumer confusion will not result from use or registration of Applicant's mark. (applicant's brief, p. 4).

By contrast, the Trademark Examining Attorney has provided for the record seven registrations owned by third parties where domestic manufacturers and merchants have adopted the same mark for cosmetics and perfume. Third-party registrations are not evidence of commercial use of the marks shown therein, or that the public is familiar with them.

Nevertheless, third-party registrations which individually cover a number of different items and which are based on use in commerce have some probative value to the extent they suggest that the listed goods emanate from a single source.

See In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785 (TTAB 1993); and In re Mucky Duck Mustard Co., Inc., 6 USPQ2d 1467, footnote 6 (TTAB 1988).

Furthermore, this conclusion is consistent with earlier decisions of this Board finding that various personal grooming products are related. See e.g., Royal Hawaiian Perfumes, Ltd. v. Diamond Head Products of Hawaii, Inc., 204 USPQ 144 (TTAB 1979) [cosmetic skin cream related to suntan preparations]; and Frances Denney, Inc. v. ViVe Parfums Ltd., 190 USPQ 302 (TTAB 1976) [perfume related to cosmetics]. Hence, we believe that purchasers, upon seeing cosmetics and perfume sold under very similar marks, would be confused as to origin and would believe that these personal grooming products emanated from a single entity or were somehow associated with the same source.

Applicant has tried to draw a distinction between its goods and those of registrant by characterizing its goods as distributed only through applicant's "Bare Essentials" chain of retail stores. The difficulty with applicant's argument is that the identification of goods does not reflect this

limitation.<sup>3</sup> Because there are no restrictions with respect to channels of trade, the Board must consider that the applicant's and registrant's respective goods could be offered and sold to the same class of purchasers through all normal channels of trade for such goods. See In re Smith and Mehaffey, 31 USPQ2d 1531 (TTAB 1994); and In re Elbaum, 211 USPQ 639 (TTAB 1981).

Based upon the record before us, we readily conclude that applicant's goods are closely related to the cited registrant's goods.

We turn next to a consideration of the marks. Applicant argues that the marks are different, and especially in the context of applicant's and registrant's respective goods. It is applicant's position that the registered mark ID is a single word and the equivalent of the word "id." As applied to cologne, perfume and fragrances, applicant argues that the mark ID may well be vaguely suggestive of "the unconscious part of the psyche." By contrast, applicant argues that its "i.d." mark is a two letter initialism meaning identification or identity. Again, according to applicant, the "i.d." mark may be vaguely suggestive of make up that helps to create an identity.

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<sup>3</sup> While applicant offered at the time of its reply brief to amend its identification of goods to include such a restriction, this was

However, with a number of different dictionary entries, the Trademark Examining Attorney has shown that the upper-case designation ID (even without any periods) is routinely defined as "I.D.," "identification," "identification card" or "identity." These same dictionary pages having entries showing upper-case ID as being the exact equivalent of I.D., also list an entry for the two letter word "id" (in all lower-case letters) defining this entry alone as meaning "the unconscious part of the psyche."

Hence, we find that most members of the consuming public will form an impression of the registered mark ID as a two-letter initialism "I-D" - often used interchangeably with "identification card" - and not the less familiar word "id." Consequently, the marks are similar in sound, appearance and meaning.

While applicant refers to its mark as "highly stylized," we actually find it to be a clear portrayal of two lower case, bold letters "i" and "d." We do note that each of these letters is followed by a prominent period. As shown in applicant's special form drawing, these periods force the connotation of "identification," "identification card" or "identity," leaving prospective consumers with none of the

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much too late in the prosecution of this application for the Office to consider this limitation.

ambiguity in meaning that applicant finds in registrant's ID mark. However, it is well recognized that purchasers are not infallible in their recollection of trademarks and often retain only a general or overall impression of the marks. See Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller, 477 F2d. 586, 177 USPQ 573 (CCPA 1973); and Interco Inc. v. Acme Boot Company, Inc., 181 USPQ 664 (TTAB 1974). Here, having concluded that the registered mark will be seen as a two-letter initialism "I-D," rather than the word "id," we find the marks i.d. and ID to be similar in appearance, sound and connotation and we find that they create similar overall commercial impressions.

In summary, because applicant's goods are closely related to the cited registrant's goods and because their respective marks create similar overall commercial impressions, we find herein that there is a likelihood of confusion.

Decision: The refusal to register is affirmed.